

THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

August 12, 1948

Hon. Preston E. Hutchinson, Accountant
Joint Legislative Committee
Austin, Texas

Opinion No. V-659

Re: Applicability of \$35
limitation in Article
I, Section 1, third
paragraph, H. B. 295,
50th Legislature, to
sparsely settled in-
dependent school dis-
tricts.

Dear Sir:

We refer to your request for an opinion concerning the applicability of the \$35 per scholastic limitation on equalization aid to independent school districts, eligible and applying for aid, under the third paragraph of Section 1, Art. I, H. B. 295, 50th Legislature. We quote from your opinion request, in part, as follows:

"The first part of this paragraph qualifies school districts and limits aid to thirty-five dollars (\$35) per scholastic. The second part of the paragraph qualifies independent school districts on about the same basis but does not specifically say that such districts are limited to thirty-five dollars (\$35) per scholastic. Since the budgetary need, requirements and qualifications of the above named districts are the same, we feel that it is necessary to ask the following question:

"Are independent districts, qualifying under this special provision, limited to thirty-five dollars (\$35) per scholastic?"

"If the above question is answered in the negative, the second question would be:

"Are independent school districts, with less than one hundred and fifty (150) scholastics, as described in Article 2763, limited to the thirty-five dollars (\$35) per scholastic?"

"Attached is an example of some ten or fifteen districts qualifying under this special provision. Please note on page 1, item 8, that said district is only applying for thirty-five dollars (\$35) per scholastic as described in Article 1, Section 1. As you will note on page 5, with the limitation removed, said district's salary aid grant will be raised from two thousand eight hundred and seventy dollars (\$2870) to eight thousand eight hundred and seven dollars (\$8807)."

The third paragraph of Section 1, of Article I, H. B. 295, reads, in part, as follows:

"Provided that school districts in counties having a scholastic population equivalent to one-half of one pupil per square mile or less in the entire county, or school districts having a scholastic population equivalent to one scholastic per square mile or less and containing one hundred (100) square miles or more in area, may be exempt from the average daily attendance requirement and the teacher-pupil quota requirement of this Act, if it is so recommended by the State Superintendent of Public Instruction and approved by the Legislative Accountant, for the purpose of maintaining a high school of sixteen (16) or more affiliated units with seven (7) or more teachers; but in no instance may the cost of the Equalization fund exceed thirty-five dollars (\$35.00) per pupil in such district. And be it further provided that Independent School Districts comprised of one hundred (100) square miles or more, and that are now accredited and equipped to maintain a twelve (12) grade school with sixteen (16) or more affiliated high school units, and having a scholastic population of less than one (1) per square mile in the district may be exempt from the average daily attendance

and teacher-pupil quota requirements of this Act if it is so recommended by the State Superintendent and approved by the Legislative Accountant for the purpose of maintaining such accredited schools and employing six(6) or more teachers including the Superintendent."

The first sentence in the above quoted paragraph is substantially the same as the third paragraph of Section 1, Article I, S. B. 167, 49th Legislature. The only material difference is that the 50th Legislature raised the limitation figure from \$25 to \$35. The remaining part of the quoted paragraph was added by the 50th Legislature.

The first sentence in the quoted paragraph specifically concerns (a) "school districts in counties having a scholastic population equivalent to one-half of one pupil per square mile or less in the entire county," or (b) "school districts having scholastic population equivalent to one scholastic per square mile or less and containing 100 square miles or more in area," and the \$35 limitation is expressly made as to "such districts."

The second sentence in said quoted paragraph specifically concerns "Independent School Districts" that are now accredited and equipped to maintain a 12-grade school with at least 16 affiliated high school units, and which have a scholastic population of less than one per square mile "in the district." There is no \$35 limitation made with respect to said independent school districts.

We think the 50th Legislature by its adoption of this second sentence provision effectively and intentionally removed independent districts as designated therein from the limitations of the first sentence. We can perceive of no reason why the Legislature would have added this latter provision except to free such designated independent districts from the \$35 limitation applicable to all school districts covered by the first part of the paragraph.

Article VI of H. B. 295 provides, in part:

"It shall be the duty of The State Superintendent of Public Instruction and

the Legislative Accountant to take such action and to make such rules and regulations not inconsistent with the terms of this Act as may be necessary to carry out the provisions of this Act, and for the best interest of the schools for whose benefit the Funds are appropriated. . ."

An examination of the several applications for State-aid attached to the opinion request, which were submitted by certain independent school districts qualifying under the second sentence of the third paragraph of Section 1 of Article I of said Act, reveals that the State Superintendent has ruled in this matter to the effect that said independent school districts are not limited by the \$35 provision applicable to school districts qualifying under the first sentence in said paragraph four of Section 1. As indicated hereinabove, we think the State Superintendent has ruled in this matter consistent with the terms of said Act.

SUMMARY

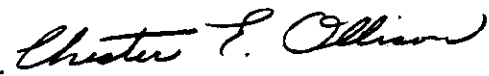
The Legislature, by its enactment of the second sentence provision in the third paragraph of Section 1 of Article I, H. B. 295, Acts 1947, intentionally removed the sparsely settled independent school districts therein designated from the \$35 limitation applicable to other school districts covered by said Act.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

CEO:mw

By



Chester E. Ollison
Assistant

APPROVED:



PRICE DANIEL
ATTORNEY GENERAL